No. 16-1432

IN THE
Supreme Court of the United States

ASHLEY SVEEN AND ANTONE SVEEN,
Petitioners,

v.

KAYE MELIN,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

REPLY BRIEF OF PETITIONERS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

I. REVOCATION–ON-DIVORCE STATUTES ARE A VALID EXERCISE OF STATES' SOVEREIGN AUTHORITY OVER DIVORCE 2

II. STATUTES AFFECTING THE DONATIVE COMPONENT OF A LIFE INSURANCE POLICY DO NOT VIOLATE THE CONTRACTS CLAUSE. 7

III. REVOCATION-ON-DIVORCE STATUTES DO NOT IMPAIR CONTRACTUAL OBLIGATIONS; RATHER, THEY CONSTRUE DIVORCE AS AN EXERCISE OF CONTRACTUAL RIGHTS. 11

IV. REVOCATION-ON-DIVORCE STATUTES DO NOT "SUBSTANTIALLY" IMPAIR CONTRACTUAL OBLIGATIONS. 13

A. The Paperwork Obligation to Re-Designate an Ex-Spouse is Not a Substantial Impairment. 13

B. Revocation-on-divorce Statutes Do Not Interfere with Policyholder Obligations. 19

V. REVOCATION-ON-DIVORCE STATUTES ARE CONSTITUTIONAL UNDER *BLAISDELL* 21

A. *Blaisdell* Should Not Be Overruled 21

B. Under *Blaisdell*, Minnesota's Statute is Constitutional. 24

CONCLUSION 26

TABLE OF AUTHORITIES

CASES

Allied Structural Steel Co. v. Spannaus, 438 U.S. 234 (1978) 16

Bird Anderson v. BNY Mellon, NA, 974 N.E.2d 21 (Mass. 2012) 10, 11

City of El Paso v. Simmons, 379 U.S. 497 (1965) 19, 22

Conley v. Barton, 260 U.S. 677 (1923) 14

Curtis v. Whitney, 80 U.S. (13 Wall.) 68 (1871) . 14, 23

East New York Savings Bank v. Hahn, 326 U.S. 230 (1945) 22

Estate of Gab, 364 N.W.2d 924 (S.D. 1985) 11

Gelfert v. National City Bank of New York, 313 U.S. 221 (1941) 22

General Motors Corp. v. Romein, 503 U.S. 181 (1992) 23

Gilfillan v. Union Canal Co. of Pennsylvania, 109 U.S. 401 (1883) 13, 14, 18

Green v. Biddle, 21 U.S. (8 Wheat.) 1 (1823) 20

Hillman v. Maretta, 569 U.S. 483 (2013) 17

Home Building & Loan Ass'n v. Blaisdell, 290 U.S. 398 (1934) 1, 21

Hudson County Water Co. v. McCarter, 209 U.S. 349 (1908) 3

Jackson dem. Hart v. Lamphire, 28 U.S. 280 (1830) 2, 14, 15

Larsen v. Northwestern National Life Insurance Co., 463 N.W.2d 777 (Minn. Ct. App. 1990) 12

Louisiana v. City of New Orleans, 102 U.S. 203 (1880) 14

Mason v. Haile, 25 U.S. (12 Wheat.) 370 (1827) 24

Maynard v. Hill, 125 U.S. 190 (1888) 6, 7

McGahey v. Virginia, 135 U.S. 662 (1890)..... 15, 16

Seibert v. United States ex rel. Lewis, 122 U.S. 284 (1887) 15

Texaco, Inc. v. Short, 454 U.S. 516 (1982) 14, 18

Trustees of Dartmouth College v. Woodward, 17 U.S. (4 Wheat.) 518 (1819) 1, 6

Vance v. Vance, 108 U.S. 514 (1883) 14

Veix v. Sixth Ward Building & Loan Ass'n of Newark, 310 U.S. 32 (1940) 14, 22

Wissner v. Wissner, 338 U.S. 655 (1950) 17

Yee v. City of Escondido, 503 U.S. 519 (1992) 3

STATUTES

Minn. Stat. § 524.2-205(1)(iii) 9

OTHER AUTHORITIES

James W. Ely, Jr., *The Contract Clause: A Constitutional History* (2016)..... 16

2 James Kent, *Commentaries on American Law* (O. Halsted, ed. 1827) 6

Benjamin Wright, *The Contract Clause of the Constitution* (1938) 22

Respondent asks this Court to overrule *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398 (1934), and its progeny, which apply a deferential standard of review under the Contracts Clause. Even if this radical suggestion had merit, it would not change the outcome of this case. Petitioners have put forward five independent grounds for reversal. Only one depends on *Blaisdell*'s deferential standard. The other four would have been just as persuasive to the Marshall Court as they are today:

- The Contracts Clause does not restrict states from prescribing the effect of a divorce decree. This view was first expressed almost 200 years ago. *Trs. of Dartmouth Coll. v. Woodward*, 17 U.S. (4 Wheat.) 518, 629 (1819) (Marshall, C.J.) (the Contracts Clause "never has been understood to restrict the general right of the legislature to legislate on the subject of divorce").

- Statutes affecting the donative component of a life insurance policy do not "impair" a contractual "obligation." Rather, they are analogous to statutes affecting beneficiary obligations in wills, which raise no Contracts Clause issues.

- Revocation-on-divorce statutes do not "impair" a contractual "obligation" because they merely construe a divorce as the exercise of the policyholder's option to change the beneficiary designation.

- Revocation-on-divorce statutes do not

"substantially" impair obligations because they implement a default rule that does not interfere with reliance interests. This argument is based on nineteenth-century authorities dating back to the Marshall Court. *See, e.g., Jackson ex dem. Hart v. Lamphire*, 28 U.S. 280 (1830).

Only if the Court rejects all four of those arguments need it consider Petitioners' fifth argument: that revocation-on-divorce statutes satisfy the modern standard of *Blaisdell* and its progeny. Should it reach that argument, the Court should reject Respondent's invitation to overrule a line of cases dating back 84 years, particularly given that Minnesota's statute exhibits none of the evils the Contracts Clause was intended to guard against. If the Court adheres to its precedent, this case is straightforward: Minnesota's statute is constitutional because it is a reasonable means of advancing legitimate public purposes.

I. REVOCATION-ON-DIVORCE STATUTES ARE A VALID EXERCISE OF STATES' SOVEREIGN AUTHORITY OVER DIVORCE.

Minnesota's statute is best understood not as a retroactive impairment of a contract, but as an amendment to Minnesota divorce law. The statute's effect was to insert an implied term into the parties' divorce decree that revoked a beneficiary designation. That exercise of a State's police power does not offend the Contracts Clause.[1]

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[1] Contrary to Respondent's suggestion (Resp. Br. 37), Petitioners

Two points are critical. First, revocation-on-divorce statutes do nothing unless a spouse files for divorce, which vests the divorce court with the plenary authority to divide the parties' assets. Second, that authority existed even before there was a revocation-on-divorce statute. Prior to the statute's enactment, divorce courts not only had the power to revoke life insurance beneficiary designations, but the power to force the policyholder to retain his ex-spouse as the beneficiary. Thus, the effect of the revocation-on-divorce statute was not to insert the State into a decision previously reserved to the contracting parties, but to regulate a decision that already was vested in the State prior to the statute's enactment—*i.e.*, the fate of a beneficiary designation in divorce. Pet. Br. 17-23.[2]

This case, therefore, falls squarely within the principle that "[o]ne whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the state by making a contract about them." *Hudson Cty. Water Co. v. McCarter*, 209 U.S. 349, 357 (1908). There is no impairment of a contractual obligation, because under pre-existing law, the fate of the beneficiary designation was not up to the

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did not waive this point. Petitioners preserved their *claim* that revocation-on-divorce statutes comply with the Contracts Clause; this is an *argument* supporting that claim. *See Yee v. City of Escondido*, 503 U.S. 519, 534 (1992). It thus is comparable to Respondent's extended argument that *Blaisdell* should be overruled, which was previewed only in passing in the BIO (at 3).

[2] This position would present no Full Faith and Credit issues (Resp. Br. 40). Minnesota's statute does not purport to apply extraterritorially, *i.e.*, to divorces by courts outside Minnesota.

contracting parties; it was up to the divorce court. Respondent contends that under the Contracts Clause, buying a policy effectively freezes State divorce law in place, thus disabling States from amending their divorce laws—even as applied to future divorces. That is wrong. The Contracts Clause does not prevent a State from regulating the exercise of power vested in state actors.

Respondent's position is particularly implausible given that the divorce court has the pre-existing power to force a policyholder to maintain an ex-spouse as beneficiary against his will—a far greater intrusion into contractual rights than a default rule of revocation. Pet. Br. 21-22. Respondent responds that this pre-existing power is different because it springs from judge-made law. Resp. Br. 38-39. But this misses the point, which is that the power to decide the fate of the beneficiary designation was already vested in the divorce court at the time of contracting.

Respondent insists that *judges* can revoke beneficiary designations, or even order divorcing spouses to maintain existing insurance policies for their ex-spouses; but if *legislatures* enact statutes authorizing such orders that deviate from pre-existing judge-made law, such statutes violate the Contracts Clause. *Id.* Respondent's position would augur an unprecedented transfer of the police power from state legislatures to state judges. Contrary to Respondent's suggestion, such orders are not comparable to garden-variety orders ancillary to contract enforcement, such as orders reforming contracts in cases of fraud or mistake. They reflect the substantive exercise of

regulatory authority over divorce. The Contracts Clause does not require that this authority be exercised only by judges.

Respondent offers two *reductiones ad absurdum* ostensibly flowing from Petitioners' position. Both are misguided.

First, according to Respondent, Petitioners' position would imply that divorce courts could abrogate third party contractual interests. Resp. Br. 37. That is incorrect. Divorce courts are vested with power to sever the spouses' legal relationship, not abrogate third party interests.

Second, according to Respondent, Petitioners' position would imply that States could enact statutes abrogating prenuptial agreements. Resp. Br. 37-38. Respondent posits a scenario in which prenuptial agreements are *binding* on divorce courts, and the State then passes a law permitting divorce courts to disregard them. *Id.* Here, by contrast, life insurance beneficiary designations did not bind divorce courts under pre-existing law. Unlike a prenuptial agreement, which is an agreement between the spouses that governs asset distribution in divorce, an insurance policy is an asset held by one spouse. Divorce courts have always had the discretionary power to dispose of life insurance policies—like any other asset—in whatever manner they deemed equitable. Minnesota's statute regulating that power does not violate the Contracts Clause.[3]

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[3] Moreover, it is unclear that statutes affecting prenuptial

History confirms that statutes prescribing the effect of a divorce decree do not implicate the Contracts Clause. Chief Justice Marshall stated that the Contracts Clause "never has been understood to restrict the general right of the legislature to legislate on the subject of divorces." *Trs. of Dartmouth Coll. v. Woodward*, 17 U.S. (4 Wheat.) 518, 629 (1819). James Kent's *Commentaries on American Law* declared that it "has generally been considered that the state governments have complete control and discretion" over the dissolution of marriages, and "in ordinary cases the constitutionality of the laws of divorce in the respective states, is not to be questioned." 2 James Kent, *Commentaries on American Law* 89-90 (O. Halsted, ed. 1827). Respondent declines to address these authorities.

Moreover, in *Maynard v. Hill*, 125 U.S. 190 (1888), the Court held that a divorce conferred by the legislature did not violate the Contracts Clause. *Id.* at 210. The Court rejected the argument that marriage is a "contract" under the Clause. *See id.* If legislative divorces are constitutional, revocation-on-divorce statutes are too, given that legislative divorces have a far more dramatic effect on contractual interests than revocation-on-divorce statutes, which merely prescribe one consequence of divorce. Notably, the ex-wife in *Maynard* argued that the decree interfered with a property interest that would have vested if she stayed married—an interest comparable to Respondent's

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agreements would implicate the Contracts Clause, given this Court's holding that marriage contracts are not "contracts" under the Clause. *Maynard v. Hill*, 125 U.S. 190 (1888).

unvested interest in the life insurance proceeds—yet the Court still found no constitutional violation. 125 U.S. at 216.

Respondent's position is ahistorical in another sense. Under Respondent's approach, virtually *any* change in the law of property distribution, which changes the treatment of pre-existing assets in divorce, could violate the Contracts Clause. Yet despite dramatic historical changes in the law of property distribution, Respondent identifies no court that has struck down any such law (other than revocation-on-divorce statutes) under the Contracts Clause. As Petitioners explained (Pet. Br. 25-28), Respondent's position would severely constrain States' power to amend their divorce laws. Especially against the traditional background of deference to State family law, the Court should not extend the Contracts Clause to laws prescribing the effect of divorce.

II. STATUTES AFFECTING THE DONATIVE COMPONENT OF A LIFE INSURANCE POLICY DO NOT VIOLATE THE CONTRACTS CLAUSE.

Alternatively, revocation-on-divorce statutes do not violate the Contracts Clause because they affect only the donative component of the insurance policy. For Contracts Clause purposes, they thus should be treated like statutes affecting beneficiary designations in wills.

Respondent argues that a beneficiary designation is "contractual." Resp. Br. 40-42. But under the constitutional text, the question is whether Minnesota's statute "impair[s]" an "obligation." The answer is no.

When there is a dispute over the proceeds, the insurer's sole obligation—both before and after the statute's enactment—is to deposit the proceeds in the Court's registry. Respondent points out that Minnesota's revocation-on-divorce statute changes state law applied by the *court* (Resp. Br. 43-44), but it does not change the *insurer*'s obligation.

Moreover, a change to a beneficiary designation cannot possibly constitute a change in the insurer's "obligation" because the policyholder can do so *unilaterally*—in violation of black-letter law that mutual consent is necessary to alter a contractual obligation. Pet. Br. 32. Respondent does not address this point.

This argument makes perfect sense because it ensures that States can enact legislation treating all bequests consistently upon divorce—that is, legislation revoking beneficiary designations in both probate and nonprobate transfers. Pet. Br. 32-35. Respondent maintains that there are policy reasons to treat life insurance policies differently from wills. But these rationales have little application in life insurance policies that function as investments (such as "whole" life insurance policies), or other contractual interests such as revocable trusts that function as will substitutes. *Id.* In any event, Respondent's policy arguments do not support interpreting the Contracts Clause to prohibit States from enacting a uniform law of bequests.

Respondent is of course correct that the selection of the insurance policy beneficiary is important to the policyholder (Resp. Br. 34-35), but that is not the point.

The point is that the Contracts Clause protects reciprocal economic relationships, not unilateral decisions to make bequests. States have the historic power to regulate such unilateral choices in the context of wills, and they should have the parallel power for nonprobate transfers.

Respondent once again offers a *reductio ad absurdum*. She argues that under Petitioners' position, States could alter beneficiary designations even *without* giving policyholders the option of changing them back. Resp. Br. 42-43. That is indeed the *reductio* of this particular argument. (To be clear, it is the *reductio* of *only* this argument, and not the other four. The argument in Section I is specific to divorce, while the arguments in Sections III, IV, and V depend on the fact that revocation-on-divorce statutes provide a default rule). But it is not *absurdum*; indeed, such statutes currently exist. For example, Minnesota's statutory-share statute requires spouses to give one-third of their "augmented estate"—which includes life insurance proceeds—to their spouses, with no opt-out. Minn. Stat. § 524.2-205(1)(iii); Pet. Br. 37-38. In Petitioners' view, this statute is a constitutional exercise of States' police power to protect surviving spouses. Respondent apparently agrees—she would uphold the statute because "widowers should be taken care of upon their spouse's death." Resp. Br. 45.

Respondent also hypothesizes a State law in which insurance beneficiaries are chosen randomly. Resp. Br. 42. That unlikely law would be terrible policy, but so would a law in which the beneficiaries of wills are chosen randomly. Neither law violates the Contracts

Clause.

That is not to say that States can alter will beneficiary designations whenever they want. A distinct body of law protects against statutes retroactively altering beneficiary designations in will and trust instruments, typically when the statute is enacted after the testator's death, when the beneficiary has already acquired a vested interest. *See, e.g., Bird Anderson v. BNY Mellon, NA*, 974 N.E.2d 21 (Mass. 2012) (statute altering beneficiary designation after testator's death violated due process). That is the logical body of law to apply to statutes affecting life insurance beneficiary designations.

Further, Respondent's position would interfere with a wide array of probate legislation, ranging from "slayer" statutes that disinherit murderers from receiving their victims' insurance proceeds, to statutes treating adopted and biological children in parallel, to the aforementioned statutory-share statutes. Pet. Br. 36-38. Respondent appears to concede that her approach would invalidate all those statutes—she speculates that they might pass muster under the *Blaisdell* approach she spends most of her brief disavowing. Resp. Br. 45. The Court should think twice about adopting a rule in which the Contracts Clause requires the proceeds of life insurance to be given to the policyholder's murderer, requires States to treat adopted children worse than biological children, and prohibits States from protecting surviving spouses. No case from this Court has endorsed such a dramatic

interference into the law of bequests,[4] and the Court should be wary of injecting the Constitution into this traditional area of state law.

III. REVOCATION-ON-DIVORCE STATUTES DO NOT IMPAIR CONTRACTUAL OBLIGATIONS; RATHER, THEY CONSTRUE DIVORCE AS AN EXERCISE OF CONTRACTUAL RIGHTS.

Suppose a State enacted a statute providing that it is no longer necessary to change a beneficiary designation in writing; an oral statement is good enough. No English speaker would characterize this statute as "impairing" the insurer's obligation. The insurer still has the obligation to give the proceeds to the policyholder's chosen beneficiary. The policyholder still has the right to choose, and change, the beneficiary. The statute merely identifies the circumstances under which state law construes the policyholder as exercising an option to change the designation.

Revocation-on-divorce statutes do the same thing. They construe divorce as reflecting the exercise of the policyholder's intent to change the beneficiary. The insurer's obligations are not *impaired*—it still is

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[4] The state-law cases cited by Respondent (Resp. Br. 45) involve different scenarios. In *Bird*, the statute retroactively changed a trust instrument *after the testator's death*. 974 N.E.2d at 32-33. In *Estate of Gab*, 364 N.W.2d 924, 925-26 (S.D. 1985) the statutory-share statute interfered with an agreement *between the spouses*. The court did not allow one spouse to defeat the statutory-share statute via a unilateral purchase of a non-probate asset.

obliged to give the money to the policyholder's selected beneficiary, which the policyholder may change at will. Even if the statute might be said to *alter* the insurer's obligation, it does not *reduce* it, which is what "impaired" means.

Respondent contends that Minnesota's statute impairs the insurer's obligation to award proceeds *in accordance with the policy*, which requires changes to beneficiary designations to occur in writing. Resp. Br. 46-47, 49. But Respondent overlooks that even before the revocation-on-divorce statute was enacted, divorce decrees could alter beneficiary designations, even without notice to the insurer, so long as they did so expressly. *See, e.g., Larsen v. Nw. Nat'l Life Ins. Co.*, 463 N.W.2d 777, 779-80 (Minn. Ct. App. 1990). Minnesota's statute merely determines *which* divorce decrees will revoke beneficiary designations.

Respondent's argument has a more fundamental flaw. Her view is that *any* change to state contract law that alters pre-existing judge-made law is *necessarily* an impairment of a contractual obligation. Resp. Br. 47. That view reads "impair" out of the Contracts Clause. The Contracts Clause says "impair"—not "alter." Indeed, the Framers stripped the word "alter[]" from the original draft of the Clause and narrowed its coverage to only those laws that "impair[] the obligation of Contracts." Pet. Br. 43. A statute allowing insurers to avoid paying would "impair"—reduce—the insurer's obligation. A statute that preserves the insurer's payment obligation and construes a divorce as the exercise of an option does not.

IV. REVOCATION-ON-DIVORCE STATUTES DO NOT "SUBSTANTIALLY" IMPAIR CONTRACTUAL OBLIGATIONS.

Only substantial impairments of obligations implicate the Contracts Clause. Pet. Br. 42. Because revocation-on-divorce statutes reflect a default rule—which can be overcome either via an express statement in the divorce decree, or via a post-divorce beneficiary change—they do not violate the Clause.

A. The Paperwork Obligation to Re-Designate an Ex-Spouse is Not a Substantial Impairment.

Respondent's position is foreclosed by a line of cases—largely from the nineteenth century, an era of peak Contracts Clause enforcement—holding that a paperwork burden is not an "impairment," even if it affects pre-existing contracts.

For instance, in *Gilfillan v. Union Canal Co. of Pennsylvania*, 109 U.S. 401 (1883), the statute at issue construed a bondholder's failure to object to a debt settlement as consent. This Court upheld the statute, pointing out that if the bondholder "does not wish to abandon his old rights and accept the new, all he has to do is to say so in writing to the president of the company." *Id.* at 406. Identical reasoning applies here. Respondent points out that the bondholder in *Gilfillan* had "actual notice" of the statute. Resp. Br. 50. But Respondent omits the reason that fact was relevant: "There is no complaint of the length of time given, and if there was it could make no difference in this case, because Gilfillan had actual notice." 109 U.S. at 406.

Thus, the Court observed that Gilfillan had actual notice in the course of rejecting an argument that Gilfillan had insufficient time to exercise his option. Respondent makes no such argument here, and offers no other basis for distinguishing *Gilfillan*.

Likewise, this Court has approved retroactive requirements to record deeds, *Jackson ex dem. Hart v. Lamphire*, 28 U.S. 280 (1830); record mortgages, *Vance v. Vance*, 108 U.S. 514 (1883); *Conley v. Barton*, 260 U.S. 677, 681 (1923); record judgments, *Louisiana v. City of New Orleans*, 102 U.S. 203, 206-07 (1880); notify landowners of tax sales, *Curtis v. Whitney*, 80 U.S. (13 Wall.) 68 (1871); and file statements of claim for mineral interests, *Texaco, Inc. v. Short*, 454 U.S. 516 (1982). *See* Pet. Br. 45-49. Respondent explains away these diverse cases with the assertion that they "arose in fields full of filing requirements designed to protect third parties." Resp. Br. 50. This assertion is not only unsubstantiated, but also self-defeating. Respondent appears to suggest that if a contract is signed in a heavily regulated area where legislation affecting existing contracts is foreseeable, such legislation satisfies the Contracts Clause. This Court's cases endorse that approach. *See, e.g., Veix v. Sixth Ward Building & Loan Ass'n of Newark*, 310 U.S. 32, 38 (1940); Pet. Br. 22. But it is Petitioners who prevail under that approach, given that divorce is the ultimate regulated field: the divorce court has plenary authority over the parties' assets. Pet. Br. 23.

Respondent also asserts that in these cases, the statutes did not "operate on the contract itself." Resp. Br. 51. To the contrary, they extinguished *all*

contractual rights to the land, mortgage, or minerals. By contrast, Minnesota's statute does not extinguish the policy, but redirects the proceeds to the contingent beneficiary.

Contrary to Respondent's contention, abiding by this line of cases will not allow States to harass contracting parties by imposing arbitrary filing requirements. In each of the cited cases, this Court verified that there was a legitimate basis for the legislation. *E.g.*, *Jackson*, 28 U.S. at 290 (explaining that "[r]easons of sound policy" justified the statute). As explained in Section V, Minnesota's statute has legitimate policy rationales and would not open the door to arbitrary legislation.

The two cases Respondent emphasizes are dramatically different from this one. In both, state legislatures issued bonds to fund Reconstruction, and then passed statutes in an effort to avoid paying bondholders back. In *Seibert v. United States ex rel. Lewis*, 122 U.S. 284 (1887), Missouri enacted a statute directing the issuance of bonds, alongside a provision requiring county courts to increase taxes to meet bond obligations. *Id.* at 290. Later, Missouri barred such tax increases unless the county prosecutor petitioned the circuit court to raise taxes. *Id.* at 292. If county prosecutors did not do this, bondholders were not paid back. The Court invalidated the statute, finding the new statute "cannot fail seriously to embarrass, hinder, and delay [the bondholder] in the collection of his debt." *Id.* at 298.

Similarly, *McGahey v. Virginia*, 135 U.S. 662 (1890), was part of a line of cases involving the Virginia

legislature's efforts to avoid paying back bondholders. *See* James W. Ely, Jr., *The Contract Clause: A Constitutional History* 181-84 (2016). The bonds at issue included "coupons" that could be used to pay state taxes which "constituted a major part of the value of the bonds." *Id.* at 181. The statute at issue in *McGahey* imposed a duty on coupon-holders to produce the original bonds, which was "impracticable" because most of the bonds had been sold to out-of-state investors. *Id.* at 183; *McGahey*, 135 U.S. at 707-08. The Court invalidated the statute because it had "the effect of rendering valueless all coupons which had been separated from the bonds to which they were attached." 135 U.S. at 694.

These cases—which involved State legislatures' efforts to avoid paying their own creditors—fall in the Contracts Clause's sweet spot. They are not remotely similar to revocation-on-divorce statutes.

Respondent's remaining efforts to establish a substantial impairment miss the mark. Respondent states that "'selection of a beneficiary is the entire point of the contract.'" Resp. Br. 35. But in assessing whether there is a substantial impairment, this Court has looked to the paperwork obligation, not the consequence of failing to abide by it. In the above-cited cases, the failure to abide by recordation or notice obligations completely extinguished *all* interest in the contract, yet this Court upheld those statutes by holding that the recordation and notice obligations themselves were not impairments. This case thus is distinguishable from *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978), on which Respondent

relies (Resp. Br. 34); in that case, the obligor could not restore its pre-existing pension obligations by filing paperwork.

Respondent's citation of this Court's preemption jurisprudence (Resp. Br. 35-36) is unhelpful. In *Wissner v. Wissner*, 338 U.S. 655 (1950), the Court held that a federal statute specifically governing the disposition of insurance benefits upon death preempted state community-property law which disposed of the benefits differently. In *Hillman v. Maretta*, 569 U.S. 483 (2013), the Court held that a federal statute that "described the precise conditions under which a divorce decree could displace an employee's named beneficiary" preempted a state statute revoking beneficiary designations under different circumstances. *Id.* at 495-97 & n.5. Obviously, federal statutes explicitly regulating bequests and divorces will preempt conflicting state regulations of bequests and divorces. Those holdings shed no light on the interpretation of the Contracts Clause.

Respondent contends that revocation-on-divorce statutes are premised on the expectation that some policyholders might forget to update beneficiary designations. Resp. Br. 49-50. But Minnesota's statute applies to all policyholders, attentive and inattentive alike. The State is entitled to enact legislation aligning the law governing wills and insurance policies for *all* citizens, even if for attentive citizens, the statute merely saves them a paperwork obligation.

There is no doubt that Minnesota anticipated that there would be forgetful policyholders. But that was also true in *Gilfillan*, where the statute facilitated the

approval of a bondholder settlement by ensuring that bondholders could not hold it up by failing to mail a consent form. *See* 109 U.S. at 405-06. Like this case, the settlement was deemed to be in the interest of the contracting parties, including the forgetful ones. *See id.* The Court upheld the statute based on its view that the paperwork requirement was minimal, *id.*—the same argument Petitioners advance here.

Likewise, in the statutes involving recording obligations, the legislatures clearly anticipated people might forget—the whole point of the statutes was to facilitate commercial activity that would occur if the obligations were not satisfied. In *Texaco*, for instance, the express statutory purpose was to facilitate "development of ... mineral interests" by extinguishing "stale and abandoned interests"—which would only happen if people did not file the paperwork. 454 U.S. at 523 (quotation marks omitted). Yet, the Court still upheld those statutes on the ground that the paperwork burden was insubstantial. Admittedly, this case differs from those cases in that Minnesota's statute protects the typical forgetful policyholder by implementing his presumed intent. By contrast, in those cases, the forgetful contracting party was stripped of all contractual rights; the legislative goal was to benefit third parties. But this distinction is helpful, not harmful, to Petitioners. The point of enforcing contracts is to vindicate the contracting party's intent. It makes no sense to single out Minnesota's statute as worthy of invalidation precisely *because* it seeks to vindicate policyholders' intent. Statutes extinguishing contracting parties' rights in an

effort to advance others' interests are the evil to which the Contracts Clause was directed; it would be illogical to subject such statutes to *less* judicial scrutiny.

B. Revocation-on-divorce Statutes Do Not Interfere with Policyholder Obligations.

No one signs a contract in reliance on the absence of a revocation-on-divorce statutes. Few people think about divorce when they buy life insurance. And if they do, they certainly would not rely on the law's treatment of *ambiguous* divorce decrees. No one buying insurance would have any reasonable expectation as to the fate of a beneficiary designation upon a hypothetical divorce—that would depend either on a follow-on settlement negotiation between the spouses, or the decision of a divorce court, neither of which is predictable at the time of contracting.

Respondent does not seriously suggest that revocation-on-divorce statutes interfere with reliance interests at the time of contracting. Instead, she argues that a high level of generality, people assume the law will not change when they enter contracts. Resp. Br. 51. But this Court's case law requires an examination of whether the particular challenged statute interferes with reliance expectations at the time of contracting. *See* Pet. Br. 50; *City of El Paso v. Simmons*, 379 U.S. 497, 514-15 (1965). This one clearly does not.

Indeed, this analysis follows directly from the Contracts Clause's text. The Contracts Clause prohibits "impairments" of contract—*i.e.*, laws that

"tend[] to diminish the value" of a contract. *Green v. Biddle*, 21 U.S. (8 Wheat.) 1, 32 (1823). No reasonable policyholder would pay less for an insurance policy based on the knowledge that in the event of a divorce, if neither the marital settlement nor the divorce court expressly addresses the beneficiary designation, the decree would revoke the designation subject to the policyholder's right to re-designate the ex-spouse. The statute is therefore constitutional.

Indeed, it is *Respondent*'s position that would impair reliance interests, by overturning divorce settlements—like the one in this case—that were negotiated with the revocation-on-divorce statute on the books. Respondent speculates (Resp. Br. 51-52) that Mark Sveen might have predicted at the time of the settlement that his children would live out of state when he died, opening the door for a diversity jurisdiction interpleader action in which the Eighth Circuit would strike down Minnesota's revocation-on-divorce statute under its *Whirlpool* precedent. This is unlikely, and Respondent's argument would not work for policyholders living outside the Eighth Circuit (or within the Eighth Circuit absent diversity jurisdiction).

Respondent also misses a more fundamental point. Revocation-on-divorce statutes do create reliance interests. But those reliance interests arise not at the time the policy is purchased, but at the time of the divorce. In particular, divorcing spouses may decline to include an express revocation term on the assumption that the statute would effectuate the revocation. Yet Respondent would effectively overturn divorce settlements enacted against the background of

revocation-on-divorce statutes, so as to reinstate the law at the time of contracting—when no reliance interests existed. That is a paradoxical position, given that the Contracts Clause is intended to protect reliance interests, not destroy them.

V. REVOCATION-ON-DIVORCE STATUTES ARE CONSTITUTIONAL UNDER *BLAISDELL*.

A. *Blaisdell* Should Not Be Overruled.

Revocation-on-divorce statutes are constitutional under the standard of *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398 (1934), and its progeny. The Court should decline Respondent's invitation to overrule those cases.

Blaisdell was correctly decided. Respondent contends that *Blaisdell* erroneously abrogated the Contracts Clause's absolute prohibition against the impairment of contracts. But that argument glosses over the difficult interpretive question: What is an "impairment"? Even Respondent concedes that some exercises of "traditional police power" are not "impairments" under the Clause (Resp. Br. 4). Interpreting "impairment" is difficult because the line between a permissible exercise of "police power" and an impermissible "impairment" is blurry.

Blaisdell drew that line with a healthy regard for the State's authority to enact legislation under its police power, emphasizing that "the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order." 290 U.S. at 435. *Blaisdell* admittedly adopted a more deferential

approach than the Marshall Court, but the Marshall Court's decisions were themselves controversial. *See* Benjamin Wright, *The Contract Clause of the Constitution* 27 (1938) ("[T]he contract clause as the Framers thought of it was a very different thing from the clause at the end of Marshall's years on the Supreme Court ... [I]t is doubtful whether a Jeffersonian would have been so thoroughly imbued with the Hamiltonian distrust of legislative interferences with the rights of private property."). In construing the term "impairment," *Blaisdell* properly erred on the side of judicial restraint toward state economic legislation. As for this Court's subsequent decisions distinguishing public from private contracts, which Respondent would also overrule, those cases reflect the common-sense view that self-interested legislation warrants careful scrutiny.

Even if *Blaisdell* was wrongly decided, it should not be overruled. Respondent proposes overruling not only *Blaisdell*, but this Court's entire body of Contracts Clause jurisprudence for the past 84 years. Respondent would overrule the New Deal-era cases that relied on *Blaisdell*;[5] *City of El Paso v. Simmons*, 379 U.S. 497 (1965), which reaffirmed *Blaisdell*; and at least three Contracts Clause cases from the 1980s. Resp. Br. 8, 9-10. Respondent also would overrule the line of cases holding that public contracts are subject to increased scrutiny under the Clause. Resp. Br. 27-31.

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[5] *See, e.g., Veix*, 310 U.S. 32; *Gelfert v. Nat'l City Bank of New York*, 313 U.S. 221 (1941); *East N.Y. Sav. Bank v. Hahn*, 326 U.S. 230 (1945).

Rarely has the Court overruled so many cases, dating back so long, in one fell swoop.

Respondent identifies no pressing need for this extraordinary step. Respondent's assertion that *Blaisdell* has yielded oppressive results is belied by the fact that this Court has not heard a Contracts Clause case since *General Motors Corp. v. Romein*, 503 U.S. 181 (1992). *Blaisdell*'s deferential standard may have deterred some litigation, but Americans are not shy about litigating under deferential standards of review. More realistically, the dearth of Contracts Clause cases shows that statutes that could even arguably implicate the Clause are rare. And if *Blaisdell*'s standard was as unmanageable as Respondent contends, one would think a single circuit split would have emerged during the past quarter-century.

It is also unclear what approach Respondent would adopt in *Blaisdell*'s place. Even before *Blaisdell*, this Court held that not "every statute which affects the value of a contract impair its obligation. It is one of the contingencies to which parties look now in making a large class of contracts, that they may be affected in many ways by State and National legislation." *Curtis v. Whitney*, 80 U.S. (13 Wall.) 68, 70-71 (1871). And this Court routinely inspected the policy justifications for statutes in Contracts Clause cases. It did so, for instance, in all of the nineteenth-century cases rejecting Contracts Clause challenges to paperwork burdens. To the extent Respondent advocates a standard in which *any* statute retroactively affecting contracts is unconstitutional, she advocates a standard this Court has never applied. Indeed, the Court

rejected this standard as far back as *Mason v. Haile*, 25 U.S. (12 Wheat.) 370 (1827), which upheld a statute freeing an imprisoned debtor against a Contracts Clause challenge.

This would be a particularly inappropriate vehicle to overrule *Blaisdell*. As Petitioners explained, this case implicates none of the political-process concerns underlying the Contracts Clause: State legislatures were clearly not bowing to lobbying efforts of insurers (who are indifferent) or disfavoring policyholders (who retain the option to change their beneficiary). Pet. Br. 61-63. Respondent totally ignores this point. Her erudite exposition of the historic political process concerns underlying the Clause draws no link to the facts of this case.

B. Under *Blaisdell*, Minnesota's Statute is Constitutional.

Revocation-on-divorce statutes satisfy *Blaisdell*'s deferential standard. Since the Uniform Probate Code adopted Section 2-804 in 1990, 26 States have adopted revocation-on-divorce statutes, BIO 7 & nn.2-4, including Minnesota by unanimous votes of both state houses. Hundreds of Minnesota legislators, and thousands of legislators nationally, have concluded that revocation-on-divorce statutes reflect the typical intent of divorcing policyholders, and that such statutes are good public policy.

Respondent asserts that the true reason for revocation-on-divorce statutes is to treat life insurance policies in line with wills. Resp. Br. 54. That is exactly right: The law has long assumed that a divorcing

spouse intends to change his will, and revocation-on-divorce statutes apply that same assumption to insurance policies. Pet. Br. 6-8.

Respondent questions the assumption that the average policyholder wants to change beneficiaries upon divorce, positing scenarios in which a policyholder might want his ex-spouse to receive the proceeds. Resp. Br. 12-13, 58-60. But the thousands of State legislators who approved these laws are better positioned to divine the typical intent of a divorcing spouse than Respondent or the members of this Court.

Notably, Respondent does not propose any ulterior motives by the Legislature, such as favoring insurers or disfavoring policyholders. She simply disagrees with legislators' empirical determinations. In cases like this, where statutes are enacted based on good-faith empirical judgments addressing traditional questions of state law, deference to legislative judgment should be at its zenith.

Minnesota's statute also is a reasonable means of achieving a legitimate end. It creates a default rule of revocation, while preserving the option to re-designate the ex-spouse as beneficiary, either in the divorce decree or thereafter. Contrary to Respondent's suggestion (Resp. Br. 55-56), the fact that Minnesota's statute preserves that option is a sign of its reasonableness, not a reason to strike it down. Respondent's assertion that Minnesota was dilatory by enacting its statute 12 years after the Uniform Probate Code's amendment (Resp. Br. 55) finds no basis in this Court's case law.

Respondent argues that Minnesota might have adopted other approaches, such as Virginia's approach of notifying forgetful policyholders upon divorce of the need to change beneficiaries. Resp. Br. 57-58, 59-60. But this approach would neither achieve the goal of parallel treatment of wills and insurance policies, nor foreclose litigation over the interpretation of ambiguous divorce decrees. More generally, this Court's deferential approach gives States a range of options in addressing social problems. The approach taken by 26 states is not unconstitutional merely because Virginia chose a different one.

CONCLUSION

The judgment of the Eighth Circuit should be reversed.

Respectfully submitted,

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